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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,023	11/30/2001	R. Sam Niedbala	1046.0034-00000	6134
68540	7590	11/30/2009		
O'BRIEN JONES, PLLC 8200 Greensboro Drive Suite 1020A McLean, VA 22102			EXAMINER ALEXANDER, LYLE	
			ART UNIT 1797	PAPER NUMBER
			NOTIFICATION DATE 11/30/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 09/997,023	<b>Applicant(s)</b> NIEDBALA ET AL.	
	<b>Examiner</b> LYLE A. ALEXANDER	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,4,6,7,9,12-23,25,73-77 and 4652 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,6-7,9,12-23,25,4652 and 73-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1,4,6-7,9,12-23,25,4652 and 73-76 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Shah (USP 4,014,322).

See the appropriate paragraph of the 10/2/07 Office action.

The 7/9/09 amendments have added the limitations to the collector portion is coupled to the handle, the sponge has a dry size and engagement of the collection with the blocking portion to discharge only a portion of sample collected by the sponge.

The Office maintains Shah in figures 1-2 the sponge(56) having a dry size. Figures 3-5 teach the sponge(56) engaged between plate(50) and lid(34) to express only a portion of the sample from the sponge and has been read on the above limitations.

***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shah (USP 4,014,322).

See the appropriate paragraph of the 10/2/07 Office action.

The 7/9/09 amendments have added the limitations to the collector portion is coupled to the handle, the sponge has a dry size and engagement of the collection with the blocking portion to discharge only a portion of sample collected by the sponge.

The Office maintains Shah in figures 1-2 the sponge(56) having a dry size. Figures 3-5 teach the sponge(56) engaged between plate(50) and lid(34) to express only a portion of the sample from the sponge and has been read on the above limitations.

### ***Response to Arguments***

5. Applicant's arguments filed 7/9/09 have been fully considered but they are not persuasive.
6. Applicant state the instant claims define over Shah because does not teach releasing variable volumes of the sample from the sponge. These remarks appear to be directed to the method of intended use of the apparatus which are of no patentable moment with respect to the pending apparatus claims. Furthermore, the device taught by Shah has the capability to release variable volumes depending on the operator's use. Shah teaches in figure 4 that not all of the liquid absorbed by the sponge(56) has been expressed and has been properly read on the pending claims.
7. Applicant states Shah fails to teach the claimed collector movable relative to the handle portion. The Office maintains the sponge(56) expands relative to the handle and has been properly read on the instant claims.

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8. Applicant states Shah fails to disclose that “any part of either shaft(40) or plate(50) is movable relative to the outer portion(48) and the remainder of shaft(40) and plate(50)”. It is not clear these remarks are commensurate in scope with the pending claims. The pending claims require relative movement of the sponge(56) with respect to the shaft(40) and the remainder of the device which are clearly met by Shah as described above.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYLE A. ALEXANDER whose telephone number is (571)272-1254. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LYLE A ALEXANDER/  
Primary Examiner, Art Unit 1797  
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